



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carolina Auto Processing

File: B-226841

Date: July 2, 1987

DIGEST

1. Failure to state the remedy desired as required by the General Accounting Office's Bid Protest Regulations is a minor procedural defect which does not require dismissal of a protest.
2. Protest of rejection of offer and request for new offer is untimely when made after the closing date for the new offer.
3. The Federal Acquisition Regulation permits a contracting officer to reopen negotiations by requesting new best and final offers when it is clearly in the government's best interest to do so. Where the government finds it necessary to make a significant clarification of the performance work statement it has not abused its discretion in requesting another round of best and final offers.
4. Protest filed April 22, 1987, that agency allegedly improperly extended a prior contract is untimely where the contract was extended on the expiration of the old contract on September 31, 1986.

DECISION

Carolina Auto Processing (CAP) protests that it was required to submit successive offers under request for proposals (RFP) No. DAHC21-86-R-0021 issued by the Military Traffic Management Command (MTMC) Department of the Army, for vehicle processing at South Atlantic Outport, North Charleston, South Carolina.

The protest is denied in part and dismissed in part.

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CAP contends that the method and procedures being used to procure the vehicle processing services are improper. CAP states that it has been requested to submit an offer three different times under this solicitation. On the third time, the Army requested best and final offers (BAFOs) by February 19, 1987, but on April 17, CAP was informed that its previous offers were "null and void." CAP contends that the procurement process has been underway for a year and the methods used by the Army are prejudicial to CAP. CAP alleges that its competition may have knowledge of CAP's offer. CAP also alleges that the prior contract for vehicle processing has been extended improperly past its maximum allowable option period.

Initially, the Army argues that the protest is defective in that the protester fails to state the relief requested as is required by our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(6) (1986). We view the failure to state the relief requested, however, as a minor procedural defect which does not require dismissal of the protest. Container Products Corp., 64 Comp. Gen. 641 (1985), 85-1 CPD ¶ 727.

The RFP was issued on August 13, 1986, with a closing date of September 11 and an anticipated date for start of contract performance of October 1, 1986. Offers were received on September 11 but were unopened because the Army issued amendment 0003 to incorporate a new wage determination and requested new offers for a November 28 closing date. After receipt of proposals on November 28, a Department of Labor (DOL) memorandum, dated December 1, was issued announcing that prevailing wage determinations were being revised to reflect changes in contribution requirements of health and welfare fringe benefits. The MTMC then issued a memorandum in response to the DOL notice directing that any RFP which has not been awarded be amended to include a revised wage determination. Amendment 0004 was issued on February 3, 1987, adding the new wage determination and calling for best and final offers on February 19.

The Army reports that subsequent to February 19, the low offeror alleged a mistake in its offer and that several ambiguities existed in the RFP. Accordingly, MTMC reviewed the performance work statement, agreed that certain ambiguities existed in the RFP and made certain changes to it. Amendment 0006 was then issued incorporating the changes and setting a new date, May 29, 1987, for the receipt of offers.

The closing dates for CAP's first two offers were September 11 and November 28, 1986. CAP did not protest the successive requests for offers until April 22, 1987, which was after the third offer was submitted and the Army

notified CAP that a fourth offer was required. Our regulations require that alleged improprieties which did not exist in the original solicitation but subsequently are incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1986). Since CAP did not protest the Army's call for the first and second BAFOs before the closing dates, these grounds of protest are dismissed as untimely. Research Analysis and Management Corp., B-218567.2, Nov. 5, 1985, 85-2 CPD ¶ 524.

With regard to the protest against requesting repeated successive offers as it relates to the third offer submitted for February 19, 1987, CAP was not informed that this offer was "null and void" until April 17 so its protest filed April 22, prior to the due date for a new proposal, is timely. 4 C.F.R. § 21.2(a)(1) and (2).

The Federal Acquisition Regulations (FAR) permit a contracting officer to reopen negotiations by requesting new best and final offers when it is clearly in the government's best interest to do so. FAR, 48 C.F.R. § 15.611(c) (1986). The decision to do so is discretionary with the contracting officer. Scientific Systems Inc., B-225574, Jan. 6, 1987, 87-1 CPD ¶ 19. We have held that where, before award, but after the receipt of best and final offers, an offeror claims a mistake in its proposal, the agency can reopen negotiations with offerors to allow the offeror claiming the mistake to revise its proposal if the agency determines that it is clearly in the government's best interest to do so. Standard Manufacturing Co., 65 Comp. Gen. 451 (1986), 86-1 CPD ¶ 304.

In this case the offeror that had a mistake in its offer was permitted to withdraw its offer. However, because of the acknowledged ambiguities in the solicitation which the offeror had raised, the Army found it necessary to revise the performance work statement and to grant an opportunity for new offers in light of the significant changes made. In this case, the Army made a significant clarification to the performance work statement by granting the contractor control and use of drained fuel from the vehicles being processed. We do not find that the Army abused its discretion by requesting another round of best and final offers considering the material clarification it made to the solicitation.

Nor do we think that the Army's conduct was prejudicial to CAP. The Army asserts that neither the final unit prices nor the total amounts offered have been disclosed, the recording of offers was not open to the public, and all

offers have been kept secure in a locked container. CAP has presented no evidence to show that its offer has been exposed to its competition. This basis of protest is denied. Le Don Computer Services, Inc., B-225451, Jan. 9, 1987, 87-1 CPD ¶ 46.

CAP's protest of the alleged improper extension of the prior vehicle processing contract is untimely since the contract was extended on the expiration of the prior contract on September 31, 1986 and CAP did not protest this extension until April 22, 1987. 4 C.F.R. § 21.2(a)(2).

The protest is denied in part and dismissed in part.

for *Signature*
Harry R. Van Cleve
General Counsel